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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.

Plaintiff, Counter-defendant
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR

**COUNTERCLAIMANT APPLE INC.'S
ADMINISTRATIVE MOTION TO SEAL**

The Honorable Yvonne Gonzalez Rogers

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Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Counterclaimant Apple Inc. (“Apple”) moves the Court to redact portions of its Motion for Entry of Judgment on its Indemnification Counterclaim (the “Motion”); the declaration of Mark Rollins (the “Rollins Declaration”); the declaration of Carlyn Irwin (the “Irwin Declaration”); and the declaration of Richard M. Pearl (the “Pearl Declaration”). Apple’s proposed redactions of that information are highlighted in GRAY in the attached un-redacted versions of each document and itemized in the concurrently filed Declaration of Mark A. Perry (the “Perry Declaration”). Apple respectfully requests that this Court fully seal Exhibit E to the Irwin Declaration.

Apple requests that the Court seal these documents, as they contain information Apple contends is sealable under controlling law and the Civil Local Rules 79-5. Specifically, the Motion and its accompanying declarations and exhibits contain competitively sensitive, non-public information regarding Apple’s: (1) internal billing policies, processes, and systems for conducting litigation and managing vendor billing; (2) negotiations with each of Apple’s vendors during the *Epic* matter; and/or (3) financial information relating to costs expended by Apple in the *Epic* litigation.

Accordingly, Apple moves to seal portions of the Motion, and its accompanying declarations and exhibits, and respectfully requests that this Court grant Apple’s request to seal the sealable information contained within these documents. Apple’s request is narrowly tailored, and the bulk of the submissions will be filed publicly.

LEGAL STANDARD

The Court has “broad latitude” “to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). When moving to seal documents attached to a dispositive motion, there must be compelling circumstances that outweigh the public policy in favor of disclosure. *See Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *see also Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). Compelling circumstances may exist when documents contain confidential trade secrets or proprietary information. *See Fed. R. Civ. P. 26(c)(1)(G)* (courts have the power to “require[e] that a trade secret, or other confidential research, development, or commercial information not be revealed”);

1 *see also Kamakana*, 447 F.3d at 1179 (compelling circumstances include potential release of trade
 2 secrets) (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014
 3 WL 4617216, at *1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication
 4 would lead to the disclosure of trade secrets). To seal information appended to non-dispositive motions,
 5 such as motions for attorneys' fees, the movant must establish "good cause." *In re Anthem, Inc. Data*
 6 *Breach Litig.*, 2018 WL 3067783 (N.D. Cal. Mar. 16, 2018). Overall, requests to seal information should
 7 be narrowly tailored "to remove from public view only the material that is protected." *Ervine v. Warden*,
 8 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S. Ops.,*
 9 *Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to seal
 10 "because the request is narrowly tailored and only includes confidential information").

11 DISCUSSION

12 I. THE COURT SHOULD GRANT APPLE'S REQUEST TO SEAL INFORMATION 13 THAT REFLECTS ITS COMPETITIVELY SENSITIVE INTERNAL BILLING 14 POLICIES, PROCESSES, AND SYSTEMS

14 Apple seeks to seal competitively sensitive business information regarding its internal billing
 15 policies, which reflect Apple's strategy and systems for conducting litigation and managing its vendors.
 16 The information is competitively sensitive because public access to this information would cause Apple
 17 economic harm and put it at a competitive disadvantage by disclosing not only Apple's billing processes,
 18 but also how those processes affect Apple's work with its third-party vendors and law firms. Rollins
 19 Decl. ¶ 41; Perry Decl. ¶¶ 7–8; *see also Ctr. for Auto Safety*, 809 F.3d at 1097; *Williams v. Apple Inc.*,
 20 2021 WL 2476916, at *2–*3 (N.D. Cal. June 17, 2021) (noting Apple's narrowed sealing requests with
 21 "tailored redactions" and finding "most of Apple's sealing requests[] appropriate" to the extent the
 22 disclosures "would harm Apple's competitive standing").

23 Sealing is necessary here because public disclosure of this information would risk competitors
 24 or others gaining an unfair business advantage by benefitting from Apple's extensive efforts to create
 25 proprietary technology tools and processes for managing their billing and vendor relationships, all of
 26 which Apple intended to keep confidential. Rollins Decl. ¶¶ 41–42; Perry Decl. ¶¶ 7–8; *see also, e.g.,*
 27 *Algarin v. Maybelline, LLC*, 2014 WL 690410, at *3 (S.D. Cal. Feb. 21, 2014) (sealing "confidential
 28 business material" where "improper use by business competitors seeking to replicate L'Oréal's business

practices” may “circumvent the time and resources necessary in developing their own practices and strategies”).

Courts in the Ninth Circuit—including this Court—have allowed the sealing of such competitively sensitive business information if the request is narrowly tailored. *See, e.g.*, Dkt. No. 643 at 3 (finding Apple’s proposed redactions for an exhibit “narrowly tailored in seeking sensitive and confidential information, the disclosure of which would result in competitive harm to Apple”); *Williams*, 2021 WL 2476916, at *1; *see also Ervine*, 214 F. Supp. 3d at 919. Here, Apple has met this standard by narrowly tailoring its request to seal only confidential information regarding Apple’s internal processes and policies for managing client billing. *See Perry Decl.* ¶¶ 7, 9.

The following documents fall within this category for the reasons discussed above, as articulated more fully in the accompanying Declaration of Mark A. Perry: (1) the Motion, (2) the Rollins Declaration, (3) the Irwin Declaration and its Exhibits B and C, and (4) the Pearl Declaration and its Exhibit A.

II. THE COURT SHOULD GRANT APPLE’S REQUEST TO SEAL INFORMATION THAT REFLECTS ITS NEGOTIATIONS WITH ITS VENDORS

Apple also seeks to seal competitively sensitive business information that reflects negotiations with its law firms and vendors that worked on the *Epic* litigation. If made public, disclosure of that information would create a substantial risk of serious financial or other injury to Apple and to its relationships with other vendors or clients. *See In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at *2 (granting a motion to seal where the disclosure of “information that could be used to derive” attorney rates and “privately negotiated financial arrangements could impair the attorneys’ bargaining power”).

First, the disclosure would constrain Apple’s ability to negotiate with current and future vendors, who would be able to use confidential knowledge to their advantage during negotiations. Rollins Decl. ¶¶ 41–42; Perry Decl. ¶¶ 10–11. *Second*, disclosure of the information could harm Apple’s vendors, which prefer that their business negotiations remain confidential, as they likewise want to maintain a level playing field in future negotiations with clients. Rollins Decl. ¶¶ 41–42; Perry Decl. ¶¶ 10–11. *Third*, and for that reason, any disclosure here would damage Apple’s relationships with its vendors.

Rollins Decl. ¶ 41; Perry Decl. ¶¶ 10–11. *Fourth*, sealing is necessary here because public disclosure of this non-public, confidential information for each specific vendor by name would risk competitors or others gaining an unfair business advantage by using this information to influence negotiations or otherwise affect competition against Apple and/or its vendors. Rollins Decl. ¶ 41; Perry Decl. ¶¶ 10–11. All of these harmful consequences establish sufficient cause to seal. *See Philips v. Ford Motor Co.*, 2016 WL 7374214, at *4 (N.D. Cal. Dec. 20, 2016) (noting that the “need to avoid competitive disadvantage in contract negotiations and undercutting by competitors is a compelling reason that justifies sealing”); *Vigdor v. Super Lucky Casino, Inc.*, 2018 WL 4510734, at *2 (N.D. Cal. Sept. 18, 2018) (sealing “business and financial information relating to the operations of Defendants”). Given the sensitive nature of this information, Apple keeps such information confidential in the ordinary course of business operations. Rollins Decl. ¶ 42; *see Ctr. for Auto Safety*, 809 F.3d at 1097; *Nixon*, 435 U.S. at 598 (sealing appropriate where documents may be used “as sources of business information that might harm a litigant’s competitive standing”).

Here, Apple’s request is sufficiently narrowly-tailored because it has redacted only payment information kept confidential in the ordinary course of business and that would injure Apple and its vendors for the *Epic* litigation if made public. Perry Decl. ¶¶ 10, 12; *see also See Vineyard House, LLC*, 619 F. Supp. 3d at 972 n.2.

The following documents fall within this category for the reasons discussed above, as articulated more fully in the accompanying Declaration of Mark A. Perry: (1) the Irwin Declaration and its Exhibits B and C, and (2) the Pearl Declaration.

III. THE COURT SHOULD GRANT APPLE’S REQUEST TO SEAL INFORMATION THAT REFLECTS APPLE’S FINANCIAL INFORMATION RELATING TO COSTS EXPENDED BY APPLE IN THE *EPIC* LITIGATION

Apple further seeks to seal specific non-public, competitively sensitive financial information that reflects costs Apple paid to its vendors in the *Epic* litigation. Non-public financial information such as this is regularly sealed, because it can reveal sensitive information that could provide competitors with an unfair advantage over the litigant. *See In re High-Tech Employee Antitrust Litig.*, 2013 WL 163779, at *8 (N.D. Cal. Jan. 15, 2013) (allowing the sealing of documents containing “confidential compensation information”).

1 Here, Apple has narrowly tailored its sealing request to include only that cost information kept
2 confidential in the ordinary course of business. *See in re Anthem, Inc. Data Breach Litig.*, 2018 WL
3 3067783, at *2 (granting a narrowly-tailored request to seal rates paid for attorneys and a paralegal);
4 Perry Decl. ¶¶ 13–14. Sealing is necessary here because public disclosure of this information, which is
5 ordinarily kept confidential, would risk competitors or others gaining an unfair business advantage by
6 using this information regarding how Apple and its vendors, including law firms, deployed financial
7 resources throughout the *Epic* litigation.

8 The following documents fall within this category for the reasons discussed above, as articulated
9 more fully in the accompanying Declaration of Mark A. Perry: (1) the Motion, (2) the Rollins
10 Declaration, (3) the Irwin Declaration, and (4) the Pearl Declaration.

11 CONCLUSION

12 For the foregoing reasons, Apple respectfully requests that the Court partially seal the identified
13 information.

14 Dated: January 16, 2024

Respectfully submitted,

15 By: /s/ Mark A. Perry

16 Mark A. Perry

WEIL, GOTSHAL & MANGES LLP

17 Attorney for Apple Inc.
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